

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

BRYAN FOSTER, an individual,  
and CHASING BUTTERFLIES  
PICTURES, LLC, a Texas  
limited liability company,

3:16-CV-02294-BR

OPINION AND ORDER

Plaintiffs,

v.

GREG BEBER, an individual;  
SEAN SKELDING, an individual;  
and HYDRA ENTERTAINMENT, LLC,  
an Oregon limited liability  
company,

Defendants.

**MATTHEW A. LEVIN**  
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**BROWN, Senior Judge.**

This matter comes before the Court on Plaintiffs' Motion (#101) for Default Judgment. For the reasons that follow, the Court **DENIES** Plaintiff's Motion with leave to renew their Motion no later than July 13, 2021, to the extent that Plaintiff can cure the deficiencies set out in this Opinion and Order.

**BACKGROUND**

The following facts are taken from Plaintiffs' Complaint, Plaintiffs' Supplemental Complaint, Plaintiffs' Amended Supplemental Complaint, the parties' materials related to Plaintiffs' Motion for Temporary Restraining Order, the parties' materials related to Plaintiffs' Motion for Terminating Sanctions, and Plaintiffs' Motion for Default Judgment.

Plaintiff Bryan Foster is an individual and sole member of Plaintiff Chasing Butterflies, LLC, a Texas limited liability company.

Defendants Greg Beber and Sean Skelding<sup>1</sup> are the sole members of Defendant Hydra Entertainment, LLC, an Oregon limited liability company.

"In the Fall of 2015, Beber and Skelding approached Foster,

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<sup>1</sup> On September 15, 2017, Plaintiffs dismissed their claims against Beber with prejudice and without costs or attorneys' fees. On December 28, 2017, Plaintiffs dismissed their claims against Skelding with prejudice and without costs or attorneys' fees.

an executive producer, investor, and businessman, and [Foster's] business associate, Tony Perez,<sup>2</sup> . . . about investing in a movie that [Beber and Skelding] wanted to produce called 'V-Force: The New Dawn of V.I.C.T.O.R.Y.'" (the Movie). Compl. at ¶ 9.

Plaintiffs allege Beber and Skelding told Foster that the total budget for the Movie was \$1,000,000 to \$1,200,000 and they asked Foster to invest \$500,000. "Beber and Skelding told [Foster] that they already had other investors . . . lined up who would invest \$500,000 to \$700,000 in the Movie." Compl. at ¶ 10. "[Beber and Skelding] also told [Foster] that they had a producer named Terry McGinnis . . . who had pre-sold the Movie at Cannes to a Chinese investor for \$500,000, and that with that pre-sale McGinnis could get matching funds for \$700,000 to finance the balance of the funds needed to complete the Movie." Compl. at ¶ 10. "Beber and Skelding represented that with those pre-commitments in place . . . Foster would immediately recoup \$400,000 of his initial investment, and would be made whole based on Oregon Film Tax Credits that the Movie would generate." Compl. at ¶ 10.

Foster agreed to invest in the Movie and "in late April 2016 . . . [Plaintiff] Chasing Butterflies transferred \$25,000 to Revolution Film Group, LLC,<sup>3</sup> Beber and Skelding's production

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<sup>2</sup> Perez is not a party to this action.

<sup>3</sup> Revolution Film Group is not a party to this action.

company to begin the pre-production process.” Compl. at ¶ 11.

At some point McGinnis and Skelding forwarded to Foster a signed letter of intent from an investor who had agreed to co-finance the Movie. Plaintiffs allege, however, that by late April 2016 the investor had “turned down the project.” Compl. at ¶ 11.

Plaintiffs allege Skelding sent an email to Foster and Perez on May 24, 2016, in which Skelding told “them that they needed to execute a ‘deal memo’ and form V-Force Movie, LLC so that they could start executing contracts; otherwise, they would lose their co-funding, state incentives, and international distribution partner.” Compl. at ¶ 13.

On May 25, 2016, Chasing Butterflies, Hydra Entertainment, and Perez signed an Operating Agreement for V-Force Movie, LLC.<sup>4</sup> On June 7, 2016, Hydra Entertainment and Chasing Butterflies signed a Deal Memo in which they “caused to be formed V-Force Movie, LLC.” Compl. at ¶ 14. Pursuant to the Deal Memo and Operating Agreement Hydra Entertainment obtained a 40% interest in V-Force Movie, LLC, and was named the managing member; Chasing Butterflies obtained a 50% interest in V-Force Movie, LLC; and Perez obtained a 10% interest in V-Force Movie, LLC. Decl. of Harry Wilson, Ex. 1 at 9. At some point “Foster, in his individual capacity, . . . acquired [Perez’s] 10%.” Compl.

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<sup>4</sup> V-Force Movie, LLC, is not a party to this action.

at ¶ 14.

The Deal Memo stated Chasing Butterflies was to provide an additional \$475,000 to V-Force Movie, LLC, “to allow [V-Force Movie, LLC,] to apply for necessary production loans and state incentives.” Wilson Decl, Ex. 2 at ¶ 2.1. Hydra Entertainment agreed in the Deal Memo to “use its best efforts to broker a deal with Cerebra Films to bring matching funds to the Project, which may include . . . minimum guarantees from foreign distributors, and/or gap loans.” Wilson Decl, Ex. 2 at ¶ 2.2.

In June 2016 Hydra Entertainment hired Cerebral Films, a company owned and operated by Terry McInnes, “to secure foreign and domestic distribution and handle any state or country rebates or incentives, facilitate a matching funds source to bring completion funding for the project, negotiate the Bridge and Gap funding and secure the Completion bonding if needed.” Wilson Decl., Ex. 3 at ¶ 6.

Filming of the Movie began in July 2016. Although “McInnes had not yet secured completion funds” at that point, “he repeatedly claimed he had investors lined up.” Wilson Decl., Ex. 5 at ¶ 7. “In July [2016] Beber and Skelding informed Foster that it was taking longer than expected to secure the state incentives, so they had not been able to obtain additional loans or financing.” Compl. at ¶ 19. Beber and Skelding “asked [Foster] to loan to V-Force [Movie, LLC,] an additional \$300,000

as a short-term gap loan so that they could continue producing the Movie while they obtained the funds that they would need to finish the film.” Compl. at ¶ 19.

On July 27, 2016, Foster “personally loaned V-Force [Movie, LLC] \$300,000.” Compl. at ¶ 21. “In exchange, V-Force [Movie, LLC,] . . . executed a promissory note<sup>5</sup> . . . agreeing to repay Foster . . . not later than August 17, 2016.” Compl. at ¶ 21.

“In early August Foster loaned another \$85,000 to [V-Force Movie, LLC].” Wilson Decl., Ex. 3 at ¶ 8.

On August 12, 2016, filming on the Movie was shut down due to lack of funds.

On November 4, 2016, Foster sent a letter<sup>6</sup> to V-Force Movie, LLC, in which he demanded immediate payment on the Note, but V-Force refused to pay. Compl. at ¶ 22.

In early November 2016 “Beber and Skelding presented an unfinished movie poster and a trailer of the film footage that was not color corrected or otherwise finished at a major film festival.” Wilson Decl., Ex. 3 at ¶ 17.

On November 22, 2016 and December 7, 2016, Foster and Chasing Butterflies “sent letters to Beber and Skelding demanding

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<sup>5</sup> The promissory note is not in the record.

<sup>6</sup> This letter and V-Force Movie, LLC’s response are not in the record.

that they cease and desist from certain actions, including the marketing of the Movie, and turn over any and all materials and information related to the Movie to Foster. Beber and Skelding refused to do so.”<sup>7</sup> Compl. at ¶ 26.

On December 8, 2016, V-Force Movie, LLC, held a “special meeting” at which Foster and Chasing Butterflies passed a resolution that Hydra Entertainment had “committed negligence, gross negligence, fraud, deceit, willful misconduct, and ha[d] breached its fiduciary duties and [V-Force Movie, LLC’s] Operating Agreement.” Decl. of Bryan Foster in Support of Pls.’ Temporary Restraining Order, Ex. 2 at 1. Foster and Chasing Butterflies removed Hydra Entertainment as manager of V-Force Movie, LLC; removed Hydra Entertainment as a member of V-Force Movie, LLC; and appointed Chasing Butterflies as manager of V-Force Movie, LLC. Decl. of Bryan Foster in Support of Pls.’ Temporary Restraining Order, Ex. 2 at 2.

“After assuming control of V-Force Movie, LLC, [Foster] repeatedly demanded that Beber and Skelding turn over V-Force Movie, LLC’s assets and property, including the raw footage shot to date and the other assets and property, so that [Foster] could complete the Movie,” but they did not do so. Wilson Decl. Ex. 3 at ¶ 23.

On December 8, 2016, Foster and Chasing Butterflies filed a

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<sup>7</sup> These letters and responses are not in the record.

Complaint in this Court against Beber, Skelding, and Hydra Entertainment alleging claims against all Defendants for breach of fiduciary duty and violations of Oregon Securities Act, a claim for fraud against Beber and Skelding, and a claim for declaratory relief against Hydra Entertainment.

On March 8, 2017, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction.

On March 17, 2017, the parties filed a Notice re: Motion for Temporary Restraining Order in which Plaintiffs withdrew their Motion for Temporary Restraining Order and Preliminary Injunction.

On March 20, 2017, the parties filed a Joint Motion for Entry of a Stipulated Order for Stay and Preliminary Injunction in which they requested the Court enter a temporary stay of this matter through May 1, 2017.

On March 21, 2017, the Court entered an Order staying this matter through May 1, 2017.

On May 10, 2017, Plaintiffs filed a Motion for Terminating Sanctions in which, among other things, they moved for a default judgment against Defendants as to all of Plaintiffs' claims in the amount of \$885,000 plus interest and fees.

On August 8, 2017, the Court heard oral argument on Plaintiffs' Motion for Terminating Sanctions, denied Plaintiffs' Motion for Terminating Sanctions, and directed the parties to

file additional pleadings. The Court also set an evidentiary hearing for September 13, 2017.

On August 14, 2017, Plaintiffs filed a Supplemental Complaint in which they requested the Court to enter a default against all Defendants in the amount of \$885,000 as a sanction for alleged perjury by Skelding and Beber in the Declarations they submitted in support of Defendants' Response to Plaintiffs' Temporary Restraining Order as well as "a preliminary injunction [requiring] defendants to immediately cease any and all management of V-Force LLC including, without limitation, management and control of V-Force LLC's business, affairs, and property, and immediately deliver to Chasing Butterflies Pictures, LLC management and control all of V-Force LLC's assets and property." Pls.' Supp'l Compl. at 11.

On August 19, 2017, Hydra Entertainment filed a Notice of Bankruptcy Stay.

On August 29, 2017, the Court heard oral argument as to whether this matter should be stayed as to all parties due to the Notice of Bankruptcy Stay. The Court granted Plaintiffs leave to file an Amended Supplemental Complaint for Terminating Sanctions, stated Skelding and Beber need not file an Answer to Plaintiffs' to-be-filed Amended Supplemental Complaint for Terminating Sanctions until further order of the Court, and directed the

parties to file a Joint Status Report addressing the bankruptcy-stay issue. The Court also struck the evidentiary hearing.

On September 6, 2017, Plaintiffs filed a Supplemental Complaint for Sanctions in which they sought sanctions against Beber and Skelding in the form of an order striking Beber and Skelding's Answers to Plaintiffs' original Complaint and finding Beber and Skelding liable on Plaintiffs' claims for fraud and violation of the Oregon Securities Act. Plaintiffs specifically did not "seek a sanction against defendant Hydra Entertainment, LLC," on the ground that "actions against Hydra Entertainment, LLC, are stayed" pursuant to the bankruptcy stay. Pls.' Supp'l Compl. at ¶ 3.

As noted, on September 15, 2017, Plaintiffs filed a Stipulated Notice of Dismissal in which they dismissed their claims against Beber with prejudice and without costs or attorneys' fees, and on December 28, 2017, Plaintiffs filed a Stipulated Notice of Dismissal in which they dismissed their claims against Skelding with prejudice and without costs or attorneys' fees.

On January 4, 2018, Plaintiffs filed a Notice Withdrawing their May 10, 2017, Motion for Terminating Sanctions.

On January 8, 2018, the remaining parties filed a Joint Status Report in which they advised the Court that all of the claims in this matter were subject to the automatic bankruptcy

stay. Accordingly, on January 9, 2018, this Court entered an Order staying this action pending resolution of the bankruptcy proceeding.

On March 6, 2019, attorney Geordie Duckler filed a Motion to Withdraw from Representation of Defendant Hydra Entertainment, LLC.

On March 11, 2019, the Court granted Duckler's Motion to Withdraw; directed Duckler to serve a copy of the Order on Hydra Entertainment; directed Duckler to advise Hydra Entertainment that it was required to be represented by counsel if this matter proceeded; and directed Duckler to file a proof of service on Hydra Entertainment as to that advice. Duckler, however, did not file a proof of service.

On February 16, 2021, Plaintiffs filed a Status Report in which they advised the Court that Hydra Entertainment's "bankruptcy concluded on December 18, 2020"; that Duckler had provided to Plaintiffs "the name of non-lawyer, Sean Skelding as a contact for Hydra," but Duckler did not identify an attorney representative; that on January 14, 2021, Plaintiffs mailed Skelding a copy of the Court's March 11, 2019, Order at the address provided by Duckler, but the letter was returned as "not deliverable"; and that Plaintiffs intended to move for entry of default against Hydra Entertainment.

On February 18, 2021, the Court entered an Order lifting the stay and directing Plaintiffs to file any motion for entry of default by February 26, 2021.

On February 26, 2021, Plaintiffs filed a Motion for Entry of Default in which they sought entry of default and default judgment against Hydra Entertainment.

On March 10, 2021, the Court entered an Order granting Plaintiffs' Motion for Entry of Default to the extent that the Court directed the Clerk to enter an Order of Default against Hydra Entertainment pursuant to Federal Rule of Civil Procedure 55(a). The Court, however, denied Plaintiffs' Motion with leave to renew to the extent that Plaintiffs sought default judgment against Hydra Entertainment. The Court directed Plaintiffs to file a separate motion for default judgment in which they were required to identify their bases for entitlement to the specific monetary relief sought against Hydra Entertainment and to provide *prima facie* proof for the amount of the requested damages.

On April 26, 2021, Plaintiffs filed a Motion (#26) for Default Judgment.

On May 24, 2021, Plaintiffs submitted a proposed form of Judgment in which they seek \$885,000 plus interest from Hydra Entertainment.

### **STANDARDS**

Federal Rule of Civil Procedure 55(b)(2) authorizes the Court to enter a default judgment after an order of default has been entered by the Clerk of Court. "The general rule of law is that upon default the factual allegations of the complaint, *except those relating to the amount of damages*, will be taken as true." *Rubicon Glob. Ventures, Inc. v. Chongqing Zongshen Grp. Imp./Exp. Corp.*, 630 F. App'x 655, 658 (9<sup>th</sup> Cir. 2015) (emphasis in original). *See also Lasheen v. Embassy of the Arab Republic of Egypt*, 625 F. App'x 338, 341 (9<sup>th</sup> Cir. 2015) (On entry of default the facts in the complaint are taken as true, but "neither the default nor the allegations in the complaint can establish the amount of damages.").

In addition, "[i]t is well settled that a default judgment for money may not be entered without a hearing unless the amount claimed is a liquidated sum or capable of mathematical calculation." *Rubicon Glob. Ventures* 630 F. App'x at 658 (quoting *Davis v. Fendler*, 650 F.2d 1154, 1161 (9<sup>th</sup> Cir. 1981)).

### **DISCUSSION**

As noted, Plaintiffs seek a default judgment against Hydra Entertainment in the amount of \$885,000. Plaintiffs base their amount of damages on five transactions: (1) in "late April 2016 . . . Chasing Butterflies, transferred \$25,000 to Revolution Film

Group, LLC"; (2) at some point Chasing Butterflies, LLC, transferred \$475,000 to V-Force Movie, LLC; (3) on July 27, 2016, "Foster personally loaned V-Force [Movie, LLC]" \$300,000; (4) on July 27, 2016, "V-Force [Movie, LLC] . . . executed a promissory note . . . agreeing to repay Foster [the \$300,000 he loaned V-Force Movie, LLC] . . . [not] later than August 17, 2016"; and (5) in August 2016 Foster loaned \$85,000 to V-Force Movie, LLC.

The record reflects Plaintiffs either transferred or loaned funds to Revolution Film Group, LLC, and V-Force Movie, LLC, neither of which is a party to this action and both of which are limited liability companies. To the extent that Plaintiffs intend to assert Hydra Entertainment is liable for \$885,000 on the ground that Hydra Entertainment was a member of V-Force Movie, LLC, Plaintiffs have not made an allegation to that effect, have not pled sufficient facts to support such an allegation, and have not cited any authority to support such an allegation.

**I. Liability of an LLC Member under Oregon Revised Statutes § 63.165(1)**

Even though Hydra Entertainment was a member of V-Force Movie, LLC, Oregon Revised Statutes § 63.165(1) provides:

(1) The debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability company. A member or manager is not

personally liable for a debt, obligation or liability of the limited liability company solely by reason of being or acting as a member or manager.

Thus, generally a member of an LLC is not personally liable for the debts, obligations, or liabilities of the LLC. The Oregon Supreme Court, however, has held § 63.165(1) does not "immunize the member for his own actions. A member or manager remains responsible for his acts or omissions to the extent those acts, or omissions would be actionable against the member or manager if that person were acting in an individual capacity." *Nebulae, Inc. v. Taylor*, No. 3:20-CV-946-JR, 2020 WL 8474587, at \*3 (D. Or. Oct. 19, 2020) (citing *Cortez v. Nacco Material Handling Grp., Inc.*, 356 Or. 254, 268-69 (2014)). "This is true even if the allegedly tortious actions were taken in the individual's capacity as member of the LLC in furtherance of the LLC's business." *Nebulae Inc.*, 2020 WL 8474587, at \*3 (citing *Cortez*, 356 Or. at 269) (Oregon Revised Statutes § 63.165(1) does not shield the member owner from responsibility for his own negligent acts in managing the LLC). According to the Oregon Supreme Court, § 63.165(1) shields LLC managers and members only from vicarious liability. Thus, the Court considers whether Hydra Entertainment is liable under *Cortez*.

Plaintiffs allege Hydra Entertainment was the managing member of V-Force Movie, LLC, until December 2016. As noted, however, § 63.165(1) provides the manager of an LLC is not

personally liable for any debt, obligation, or liability of the LLC solely by reason of acting as manager. Hydra Entertainment's status solely as manager of V-Force Movie, LLC, therefore, is insufficient to render it personally liable for the debts or obligations of V-Force Movie, LLC.

As noted, however, the Oregon Supreme Court has made clear that a member or manager of an LLC remains responsible for its own acts or omissions to the extent that those acts or omissions would be actionable against the member or manager if that entity acted in an individual capacity. *Cortez*, 356 Or. at 268-69. Although Plaintiffs do not make any argument to support holding Hydra Entertainment responsible for the obligations of V-Force Movie, LLC, in their Motion for Default Judgment, Plaintiffs allege Hydra Entertainment breached its "fiduciary duty of good faith and undivided loyalty" when it "fail[ed] to obtain sufficient funds to produce the Movie, market[ed] the Movie at a film festival before it was ready, materially misrepresent[ed] its ability to produce a finished film, materially misrepresent[ed] its ability to obtain sufficient funds to produce a finished film, and fail[ed] to disclose material facts to plaintiffs." Pls.' Mot. for Default Judgment at 5. From these allegations the Court could infer Hydra Entertainment engaged in tortious actions in its individual capacity sufficient to be held liable for the obligations of

V-Force Movie, LLC. The evidence Plaintiffs rely on to support some of these allegations, however, does not establish Hydra Entertainment took such actions. For example, Plaintiffs state in their Motion for Default Judgment that "Foster testified in a declaration to this Court that Hydra [Entertainment] failed to line up other investors, obtain state incentives, and acquire bank financing. (Ex. 3 to Wilson Decl., ¶¶ 7, 9, 12.) He also testified that Hydra [Entertainment] marketed the film before it was ready, deeply damaging it. (*Id.* ¶ 17.)." Pls.' Mot. for Default Judgment at 5. In the cited portions of Foster's Declaration relied on by Plaintiffs, however, Foster states:

On May 24, 2016, *Skelding* sent me and my business partner an email telling us that we needed to execute a "deal memo" and form V-Force Movie, LLC so that they could start executing contracts, otherwise they would lose their co-funding, state incentives, and international distribution partner. I later learned that, unbeknownst to me, the potential investor that *Skelding and Beber* had represented to me was on board had already backed out of the project in April.

\* \* \*

In July, *Beber and Skelding* told me that it was taking longer than expected to secure state incentives, so they had not been able to obtain additional loans or financing. They asked me to loan V-Force an additional \$300,000 as a short-term gap loan so that they could continue producing the Movie while they obtained the funds that they would need to finish the film.

\* \* \*

I did not want to give V-Force the additional loan, and told *Beber and Skelding* that although I

had the money, I had it set aside for another project. *Beber and Skelding* told me multiple times that bank funding had been secured, and that the loan was scheduled to close no later than August 16, 2016.

I later learned that in reality, no bank financing had been secured, and no bank had committed to close a loan by August 16. But because I did not know the true facts at the time, I ultimately relented.

\* \* \*

*Beber and Skelding* presented an unfinished movie poster and a trailer of the film footage that was not color corrected or otherwise finished at a major film festival.

Foster Decl. at ¶¶ 7, 9, 11-12, 17 (emphasis added). All of the alleged "bad acts" set out by Foster in the cited portions of his Declaration are ascribed to Beber and/or Skelding rather than to Hydra Entertainment. Moreover, to the extent that Plaintiffs intend to rely on the allegation that Hydra Entertainment breached its duty of good faith and loyalty when it failed to obtain sufficient funds to produce the Movie, the Court notes the Deal Memo only required Hydra Entertainment to "use its best efforts to broker a deal with Cerebra Films to bring matching funds to the Project, which may include . . . minimum guarantees from foreign distributors, and/or gap loans." Wilson Decl, Ex. 2 at ¶ 2.2. The record reflects in June 2016 Hydra Entertainment hired Cerebral Films "to secure foreign and domestic distribution and handle any state or country rebates or incentives, facilitate a matching funds source to bring completion funding for the

project, negotiate the Bridge and Gap funding and secure the Completion bonding if needed.” Wilson Decl., Ex. 3 at ¶ 6. Thus, on this record it is unclear that Hydra Entertainment breached its duties under the Deal Memo sufficiently to render it personally liable for the funds transferred to V-Force Movie, LLC.

On this record the Court concludes Plaintiffs have failed to point to any evidence, to cite any authority, or to make any arguments that support holding Hydra Entertainment liable for the debts, obligations, or liabilities of V-Force Movie, LLC, pursuant to Oregon Revised Statutes § 63.165(1) and *Cortez*.

## **II. Piercing the Corporate Veil**

Even though Plaintiffs did not allege the Court should pierce the corporate veil of V-Force Movie, LLC, nor assert a claim based on piercing the corporate veil of V-Force Movie, LLC, the Court notes Oregon courts have held LLC members can be personally liable for corporate damages under that theory. See, e.g., *Sterling Savings Bank v. Emerald Dev.*, 266 Or. App. 312, 341 (2014) (Under Oregon law a party can pierce the corporate veil of an LLC even when the LLC has multiple members). “Piercing the corporate veil is a court-made doctrine whereby the corporate form is disregarded to avoid injustice, and it can apply in the case of limited liability companies as well as corporations.” *Rowden v. Hogan Woods, LLC*, 306 Or. App. 658, 679 (2020) (citing

*Amfac Foods v. Int'l Sys.*, 294 Or. 94, 104 (1982)). "Piercing the corporate veil[, however,] 'is an extraordinary remedy which exists as a last resort, where there is no other adequate and available remedy to repair plaintiff's injury.'" *Zuvich v. Harvard St. Wishrock, LLC*, No. 6:20-CV-00737-MC, 2020 WL 6808766, at \*3 (D. Or. Nov. 19, 2020) (quoting *Amfac Foods*, 294 Or. at 103).

To pierce a corporate veil a plaintiff must show: "(1) a shareholder actually controlled or shared in the actual control of the corporation; (2) the shareholder engaged in improper conduct in the exercise of control over the corporation; and (3) the shareholder's improper conduct caused the plaintiff's inability to obtain an adequate remedy from the corporation." *SCI Collaboration, LLC v. Sports Car Int'l, LLC*, No. 3:20-CV-170-AC, 2020 WL 6531912, at \*5 (D. Or. Nov. 5, 2020) (citing *Salem Tent & Awning Co. v. Schmidt*, 79 Or. App. 475, 481 (1986)).

As noted, Plaintiffs did not assert a claim based on piercing the corporate veil. It appears the record, however, may support an inference that Hydra Entertainment could have controlled or shared in the control of V-Force Movie, LLC, until December 2016 when it was removed as manager. For example, the Operating Agreement provides:

The business and affairs of [V-Force Movie, LLC] shall be managed by Hydra Entertainment, LLC, in its capacity as manager. Except for situations in which the approval of the Members is expressly

required by this Agreement . . . the Manager shall have complete authority, power, and discretion to manage and control the business, affairs, and property of [V-Force Movie, LLC], to make all decisions regarding those matters and to perform any and all other acts customary or incident to the management of [V-Force Movie, LLC's] business.

Wilson Decl., Ex. 1 at ¶ 7.1. It is unclear, however, whether Hydra Entertainment engaged in any specific improper conduct in its exercise of control over V-Force Movie, LLC, as noted in the Court's discussion of § 63.165(1). The record is also unclear whether Hydra Entertainment's allegedly improper conduct caused Plaintiffs' "inability to obtain an adequate remedy from" V-Force Movie, LLC. Accordingly, even if the Court infers Plaintiffs intended to rely on the theory of piercing the corporate veil of V-Force Movie, LLC, there are not sufficient facts in this record from which the Court can conclude it would be appropriate to do so and to hold Hydra Entertainment responsible for the debts, obligations, or liabilities of V-Force Movie, LLC.

### **III. Relationship of Hydra Entertainment to Revolution Film Group**

Finally, \$25,000 of the damages that Plaintiffs seek to recover from Hydra Entertainment arise from the fact that Chasing Butterflies transferred \$25,000 to Revolution Film Group, LLC, in April 2016. It appears Plaintiffs are basing their efforts to recover the \$25,000 on the premise that Hydra Entertainment is responsible for the debts, obligations, or liabilities of Revolution Film Group. The record, however, reflects Revolution

Film Group had only two members: Beber and Skelding. Plaintiffs do not allege Hydra Entertainment is or was a member of Revolution Film Group nor do Plaintiffs allege any other relationship between Hydra Entertainment and Revolution Film Group from which the Court could infer Hydra Entertainment is responsible for the debts, obligations, or liabilities of Revolution Film Group.

Nevertheless, in their Motion for Default Judgment Plaintiffs group the \$25,000 transferred from Chasing Butterflies to Revolution Film Group together with the \$475,000 that Chasing Butterflies provided to V-Force Movie, LLC, and seek a total of \$500,000 from Hydra Entertainment despite the lack of evidence establishing any relationship between Revolution Film Group and Hydra Entertainment. Specifically, Plaintiffs state Chasing Butterflies "invested \$500,000 [in] V-Force LLC" as "recorded in [the] 'Deal Memo.'" Pls.' Mot. at 6. The Deal Memo, however, states: "[Chasing Butterflies] will fund the [V-Force Movie LLC] account . . . in the full amount of Four Hundred Seventy Five Thousand Dollars (\$475,000.00) representing [Chasing Butterflies'] total investment of \$500,000.00 less \$25,000.00 already provided to [Revolution Film Group] for pre-production." Wilson Decl., Ex. 2 at ¶ 2.1 (emphasis added). In addition, Plaintiffs allege in the Complaint: "Chasing Butterflies, transferred \$25,000 to *Revolution Film Group, LLC* . . . to begin

the pre-production process.” Compl. at ¶ 11 (emphasis added). Defendants acknowledge in their Answer “that Chasing Butterflies transferred \$25,000 to Revolution Film Group.” Defs.’ Answer at ¶ 11. Although the record confirms Chasing Butterflies transferred \$25,000 to Revolution Film Group, Plaintiffs do not provide any basis for the Court to infer under either Oregon Revised Statutes § 63.165(1) or a piercing-the-corporate-veil theory that Hydra Entertainment has any relationship to Revolution Film Group.

Thus, although the documents and Declarations submitted by Plaintiffs may support an inference that Plaintiffs incurred \$885,000 in damages, Plaintiffs have not established they are entitled to an award of those damages from Hydra Entertainment. On this record, therefore, the Court concludes Plaintiffs have not established a sufficient basis for the Court to enter a Judgment against Hydra Entertainment, LLC, for \$885,000. Accordingly, the Court denies Plaintiffs’ Motion for Default Judgment.

The Court, however, notes the record suggests Plaintiffs may be able to establish a basis for Hydra Entertainment’s responsibility for the debts, obligations, or liabilities of V-Force Movie, LLC. The Court, therefore, grants Plaintiffs leave to renew their Motion for Default Judgment no later than July 13,

2021, to the extent that Plaintiffs can cure the deficiencies set out in this Opinion and Order.

**CONCLUSION**

For these reasons, the Court **DENIES** Plaintiffs' Motion (#101) for Default Judgment. The Court, however, **GRANTS** Plaintiffs leave to renew their Motion for Default Judgment no later than July 13, 2021, to the extent that Plaintiffs can cure the deficiencies set out in this Opinion and Order.

IT IS SO ORDERED.

DATED this 14<sup>th</sup> day of June, 2021.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States Senior District Judge